



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 174894

PRELIMINARY RECITALS

Pursuant to a petition filed on June 10, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on July 28, 2016, by telephone.

The issue for determination is whether the petitioner must repay an overpayment of medical assistance.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. The respondent seeks to recover \$2,905.73 in medical assistance received by the petitioner from September, 2015, through March 31, 2016, because it contends that she failed to report income that affected her benefits.
3. The petitioner reported all changes of her income that occurred in the overpayment period to the respondent on time.

DISCUSSION

The department may recover any overpayment of medical assistance that occurs because a “recipient” or anyone “responsible for giving information on the recipient's behalf” fails “to report any change in the recipient's financial ...that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.” Wis. Stat. § 49.471(10)(b)3; *BadgerCare Plus Handbook*, 19.1. The county agency seeks to recover \$2,905.73 in medical assistance received by the petitioner from September, 2015, through March 31, 2016, because it contends that she failed to report income that affected her benefits. She contends that she is not responsible for the overpayment because she did in fact report the change in income.

The respondent, as the party that seeks to change the current state of affairs by recovering an overpayment, has the burden of proving that an overpayment occurred by the preponderance of the credible evidence. There is not a lot of evidence concerning whether the petitioner reported her change of income. She testified that she did, but she has no documentation such as a fax receipt, telephone record, or acknowledgement to back up her claim. Nothing in the agency’s records indicate that it received anything from the petitioner informing it that her income had increased, but none of its workers who would have handled such a document testified or were available for questioning.

The petitioner in this matter was credible. She testified that she not only reported the income via an online change report, but also provided her pay stubs in person. She testified that the income information was provided at the end of June, 2015, and that she was asked to send in updated paystubs. She stated that an Employer Verification Wages was also provided, and specifically recalled that she was instructed to place her documents into an envelope and drop that in a “black box” at respondent’s office. The specificity with which she recalled reporting her income makes me doubt the reliability of the respondent’s records in this instance. As the bearer of the burden of proof, unless the weight of the evidence tips at least slightly in the agency’s favor, she does not have to repay the overpayment. Based upon her testimony and the lack of first-hand testimony against her, I find that she did report the change. Therefore, the agency cannot recover the alleged overpayment.

CONCLUSIONS OF LAW

The county agency cannot recover the overpayment of medical assistance the petitioner allegedly received from September, 2015, through March 31, 2016, because she reported any change of income to the agency within the period she was required to do so.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to rescind this overpayment (Claim no. [REDACTED]) and cease all collections activities pertaining thereto.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of September, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 13, 2016.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability